

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DANIEL FERRIE,

Plaintiff,

v.

KMART CORPORATION,

Defendant.

Civil Action No: 04-12068 (JLT)

**DOCUMENTS AND DEPOSITION TESTIMONY SUBMITTED
IN SUPPORT OF KMART'S MOTION FOR SUMMARY JUDGMENT**


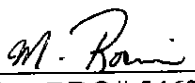
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- TAB 2: Excerpts from Ferrie's deposition, taken February 28, 2005.
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- TAB 5: Excerpts from the deposition of Kmart's Rule 30(b)(6) witness, David B. Hughes.
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- TAB 14: Documents regarding Carleton (Chuck) James, Daniel Nicolini and David Bennett
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Respectfully Submitted,

KMART CORPORATION

By its attorneys,

David S. Rubin, Esq. BBO# 546213
Jeffrey M. Rosin, Esq. BBO #629216
FOLEY & LARDNER LLP
111 Huntington Avenue
Boston, MA 02199
(617) 342-4000

Dated: September 19, 2005

TAB 1

Job Summary

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Job Summary

FERRIE,DANIEL A

EmplID: 01000071260

SSN: 024360166

Job Information

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General	Job Information	Work Location	Compensation
Eff Date	Sequence	Action	
03/02/2004	0	Termination	
03/01/2004	0	Return from Leave	
02/29/2004	0	Data Change	
01/29/2004	0	Data Change	
01/18/2004	0	Paid Leave of Absence	
01/17/2004	0	Leave of Absence	
01/30/2003	0	Data Change	

Action Reason

Violation of Rules
 Return From Leave
 Paid Leave Pay Change
 Change in Bonus
 Workers Comp - Reduced Pay
 HR Network
 Change in Bonus

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KMART00069

Job Summary

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Job Summary

FERRIE,DANIEL A

EmplID: 01000071260

SSN: 024360166

Job Information

[View All](#)First  8-14 of 26  Last

General	Job Information	Work Location	Compensation
Eff Date	Sequence	Action	
06/16/2002	0	Pay Rate Change	
01/31/2002	0	Data Change	
09/27/2001	0	Promotion	
07/01/2001	0	Pay Rate Change	
06/28/2001	0	Promotion	
05/03/2001	0	Data Change	
05/01/2001	0	Pay Rate Change	

Action Reason

Annual Increase

Change in Bonus

Promotion

Annual Increase/Adjustment

Promotion

Change in Bonus

Annual Increase

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Job Summary

FERRIE,DANIEL A

EmplID: 01000071260

SSN: 024360166

Job Information

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General	Job Information	Work Location	Compensation
Eff Date	Sequence	Action	
02/01/2001	0	Job Reclassification	
10/01/2000	0	Promotion	
08/17/2000	0	Promotion	
07/27/2000	0	Data Change	
06/01/2000	0	Job Reclassification	
01/27/2000	0	Data Change	
12/01/1999	0	Data Change	

Action Reason

Store Volume Reclassification

Promotion

Promotion

Change in Bonus

Title Change

Change in Bonus

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FERRIE,DANIEL A

EmplID: 01000071260

SSN: 024360166

Job Information[View All](#) First  22-26 of 26  Last

General	Job Information	Work Location	Compensation
Eff Date	Sequence	Action	
08/26/1999	0	Promotion	
04/22/1999	0	Pay Rate Change	
10/08/1998	0	Promotion	
08/27/1998	0	Transfer	
07/16/1998	0	Hire	

Action Reason

Promotion
Annual Increase
Promotion
Lateral Transfer
New Hire

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FERRIE,DANIEL A

EmplID: 01000071260

SSN: 024360166

Job Information[View All](#)First 1-7 of 26 

General	Job Information	Work Location	Compensation
---------	-----------------	---------------	--------------

Eff Date	Sequence	Jobcode	Empl Type	Empl Status	Full/Part Time	Reg/Temp	Standard Hours	Work Per
03/02/2004	0	StrMgrIII	Salaried	Terminated	Full-Time	Regular	48.00	Weekly
03/01/2004	0	StrMgrIII	Salaried	Active	Full-Time	Regular	48.00	Weekly
02/29/2004	0	StrMgrIII	Salaried	Leave W/Py	Full-Time	Regular	48.00	Weekly
01/29/2004	0	StrMgrIII	Salaried	Leave W/Py	Full-Time	Regular	48.00	Weekly
01/18/2004	0	StrMgrIII	Salaried	Leave W/Py	Full-Time	Regular	48.00	Weekly
01/17/2004	0	StrMgrIII	Salaried	Leave	Full-Time	Regular	48.00	Weekly
01/30/2003	0	StrMgrIII	Salaried	Active	Full-Time	Regular	48.00	Weekly

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Job Summary

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Job Summary

FERRIE,DANIEL A

EmplID: 01000071260

SSN: 024360166

Job Information

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<div>General</div> <div>Job Information</div> <div>Work Location</div> <div>Compensation</div>								
Eff Date	Sequence	Jobcode	Empl Type	Empl Status	Full/Part Time	Reg/Temp	Standard Hours	Work Per
06/16/2002	0	StrMgrIII	Salaried	Active	Full-Time	Regular	48.00	Weekly
01/31/2002	0	StrMgrIII	Salaried	Active	Full-Time	Regular	48.00	Weekly
09/27/2001	0	Str MgrIV	Salaried	Active	Full-Time	Regular	48.00	Weekly
07/01/2001	0	Str TMgr I	Salaried	Active	Full-Time	Regular	48.00	Weekly
06/28/2001	0	Str TMgr I	Salaried	Active	Full-Time	Regular	48.00	Weekly
05/03/2001	0	StrTMgrIII	Salaried	Active	Full-Time	Regular	48.00	Weekly
05/01/2001	0	StrTMgrIII	Salaried	Active	Full-Time	Regular	48.00	Weekly

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Job Summary

FERRIE,DANIEL A

EmplID: 01000071260

SSN: 024360166

Job Information

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General	Job Information	Work Location	Compensation
---------	-----------------	---------------	--------------

Eff Date	Sequence	Jobcode	Empl Type	Empl Status	Full/Part Time	Reg/Temp	Standard Hours	Work Per
02/01/2001	0	StrTMgrIII	Salaried	Active	Full-Time	Regular	48.00	Weekly
10/01/2000	0	StrTMgrIII	Salaried	Active	Full-Time	Regular	48.00	Weekly
08/17/2000	0	ProTem Mgr	Salaried	Active	Full-Time	Regular	48.00	Weekly
07/27/2000	0	Rep TM D	Salaried	Active	Full-Time	Regular	48.00	Weekly
06/01/2000	0	Rep TM D	Salaried	Active	Full-Time	Regular	48.00	Weekly
01/27/2000	0	Repl TM	Salaried	Active	Full-Time	Regular	48.00	Weekly
12/01/1999	0	Repl TM	Salaried	Active	Full-Time	Regular	48.00	Weekly

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Job Summary

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Job Summary

FERRIE,DANIEL A

EmplID: 01000071260

SSN: 024360166

Job Information

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General	Job Information	Work Location	Compensation
---------	-----------------	---------------	--------------

Eff Date	Sequence	Jobcode	Empl Type	Empl Status	Full/Part Time	Reg/Temp	Standard Hours	Work Per
08/26/1999	0	Repl TM	Salaried	Active	Full-Time	Regular	48.00	Weekly
04/22/1999	0	HL TMgr	Salaried	Active	Full-Time	Regular	48.00	Weekly
10/08/1998	0	HL TMgr	Salaried	Active	Full-Time	Regular	48.00	Weekly
08/27/1998	0	SL TAM Mtp	Salaried	Active	Full-Time	Regular	48.00	Weekly
07/16/1998	0	Pacesetter	Salaried	Active	Full-Time	Regular	48.00	Weekly

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Job Summary

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Job Summary

FERRIE,DANIEL A

EmplID: 01000071260

SSN: 024360166

Job Information

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General		Job Information	Work Location	Compensation				
Eff Date	Sequence	Position	Company	DeptID	Sal Plan	Grade	Pay Group	Frequency
03/02/2004	0		KMC	3879-Store	STC	017	Y53	Semimonthl
03/01/2004	0		KMC	3879-Store	STC	017	Y53	Semimonthl
02/29/2004	0		KMC	3879-Store	STC	017	Y53	Semimonthl
01/29/2004	0		KMC	3879-Store	STC	017	Y53	Semimonthl
01/18/2004	0		KMC	3879-Store	STC	017	Y53	Semimonthl
01/17/2004	0		KMC	3879-Store	STC	017	Y53	Semimonthl
01/30/2003	0		KMC	3879-Store	STC	017	Y53	Semimonthl

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Job Summary

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Job Summary

FERRIE,DANIEL A

EmplID: 01000071260

SSN: 024360166

Job Information

[View All](#)First  8-14 of 26  Last

General		Job Information	Work Location	Compensation				
Eff Date	Sequence	Position	Company	DeptID	Sal Plan	Grade	Pay Group	Frequency
06/16/2002	0		KMC	3879-Store	STC	017	Y53	Semimonthl
01/31/2002	0		KMC	3879-Store	STC	017	Y53	Semimonthl
09/27/2001	0		KMC	3879-Store	STC	018	Y53	Semimonthl
07/01/2001	0		KMC	3401-Store	STA	016	Y53	Semimonthl
06/28/2001	0		KMC	3401-Store	STA	016	Y53	Semimonthl
05/03/2001	0		KMC	3486-Store	STC	017	Y53	Semimonthl
05/01/2001	0		KMC	3486-Store	STC	017	Y53	Semimonthl

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Job Summary

FERRIE,DANIEL A

EmplID: 01000071260

SSN: 024360166

Job Information

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General		Job Information	Work Location	Compensation				
Eff Date	Sequence	Position	Company	DeptID	Sal Plan	Grade	Pay Group	Frequency
02/01/2001	0		KMC	3486-Store	STC	017	Y53	Semimonthl
10/01/2000	0		KMC	3486-Store	STC	017	Y53	Semimonthl
08/17/2000	0		KMC	7605-Store	KMC	015	Y53	Semimonthl
07/27/2000	0		KMC	7605-Store	KMC	011	O53	Biweekly
06/01/2000	0		KMC	7605-Store	KMC	011	O53	Biweekly
01/27/2000	0		KMC	7605-Store	KMC	011	O53	Biweekly
12/01/1999	0		KMC	7605-Store	KMC	011	O53	Biweekly

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Job Summary

FERRIE,DANIEL A

EmplID: 01000071260

SSN: 024360166

Job Information

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General		Job Information	Work Location	Compensation				
Eff Date	Sequence	Position	Company	DeptID	Sal Plan	Grade	Pay Group	Frequency
08/26/1999	0		KMC	7605-Store	KMC	011	O53	Biweekly
04/22/1999	0		KMC	7605-Store	KMC	011	O53	Biweekly
10/08/1998	0		KMC	7605-Store	KMC	011	O53	Biweekly
08/27/1998	0		KMC	7605-Store	KMC	010	O53	Biweekly
07/16/1998	0		KMC	3879-Store	KMC	UNG	O53	Biweekly

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

Job Summary

FERRIE,DANIEL A

EmplID: 01000071260

SSN: 024360166

Job Information

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General	Job Information	Work Location	Compensation
---------	-----------------	---------------	--------------

Eff Date	Sequence	Annual Rt	Monthly Rt	Daily Rt	Hrly Rate	Currency	Change Percent	Components
03/02/2004	0	\$88,900.000	\$7,408.333	\$341.923	\$35.616987	USD	0.000	Components
03/01/2004	0	\$88,900.000	\$7,408.333	\$341.923	\$35.616987	USD	0.000	Components
02/29/2004	0	\$88,900.000	\$7,408.333	\$341.923	\$35.616987	USD	0.000	Components
01/29/2004	0	\$88,900.000	\$7,408.333	\$341.923	\$35.616987	USD	0.000	Components
01/18/2004	0	\$88,900.000	\$7,408.333	\$341.923	\$35.616987	USD	0.000	Components
01/17/2004	0	\$88,900.000	\$7,408.333	\$341.923	\$35.616987	USD	0.000	Components
01/30/2003	0	\$88,900.000	\$7,408.333	\$341.923	\$35.616987	USD	1.950	Components

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Job Summary

FERRIE,DANIEL A

EmplID: 01000071260

SSN: 024360166

Job Information

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General	Job Information	Work Location	Compensation
---------	-----------------	---------------	--------------

Eff Date	Sequence	Annual Rt	Monthly Rt	Daily Rt	Hrly Rate	Currency	Change Percent	Components
06/16/2002	0	\$88,900.000	\$7,408.333	\$341.923	\$35.616987	USD	1.950	Components
01/31/2002	0	\$87,200.000	\$7,266.667	\$335.384	\$34.935897	USD	2.108	Components
09/27/2001	0	\$87,200.000	\$7,266.667	\$335.384	\$34.935897	USD	2.108	Components
07/01/2001	0	\$85,400.000	\$7,116.667	\$328.461	\$34.214744	USD	1.667	Components
06/28/2001	0	\$84,000.000	\$7,000.000	\$323.076	\$33.653846	USD	16.829	Components
05/03/2001	0	\$71,900.000	\$5,991.667	\$276.538	\$28.806090	USD	4.200	Components
05/01/2001	0	\$71,900.000	\$5,991.667	\$276.538	\$28.806090	USD	4.200	Components

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Job Summary

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Job Summary

FERRIE,DANIEL A

EmplID: 01000071260

SSN: 024360166

Job Information

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General	Job Information	Work Location	Compensation
---------	-----------------	---------------	--------------

Eff Date	Sequence	Annual Rt	Monthly Rt	Daily Rt	Hrly Rate	Currency	Change Percent	Components
02/01/2001	0	\$69,000.000	\$5,750.000	\$265.384	\$27.644231	USD	16.949	Components
10/01/2000	0	\$69,000.000	\$5,750.000	\$265.384	\$27.644231	USD	16.949	Components
08/17/2000	0	\$59,000.000	\$4,916.667	\$226.923	\$23.637821	USD	18.000	Components
07/27/2000	0	\$50,000.000	\$4,166.667	\$192.307	\$20.032051	USD	0.000	Components
06/01/2000	0	\$50,000.000	\$4,166.667	\$192.307	\$20.032051	USD	0.000	Components
01/27/2000	0	\$50,000.000	\$4,166.667	\$192.307	\$20.032051	USD	0.000	Components
12/01/1999	0	\$50,000.000	\$4,166.667	\$192.307	\$20.032051	USD	6.838	Components

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Job Summary

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
Job Summary

FERRIE,DANIEL A

EmplID: 01000071260

SSN: 024360166

Job Information

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General	Job Information	Work Location	Compensation
---------	-----------------	---------------	--------------

Eff Date	Sequence	Annual Rt	Monthly Rt	Daily Rt	Hrly Rate	Currency	Change Percent	Components
08/26/1999	0	\$50,000.000	\$4,166.667	\$192.307	\$20.032051	USD	6.838	Components
04/22/1999	0	\$46,800.000	\$3,900.000	\$180.000	\$18.750000	USD	4.000	Components
10/08/1998	0	\$45,000.000	\$3,750.000	\$173.076	\$18.028846	USD	7.143	Components
08/27/1998	0	\$42,000.000	\$3,500.000	\$161.538	\$16.827000	USD	0.000	Components
07/16/1998	0	\$42,000.000	\$3,500.000	\$161.538	\$16.827000	USD	0.000	Components

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TAB 2

Daniel Ferrie

02/28/2005

1

CERTIFIED ORIGINAL
LEGALINK BOSTON

VOLUME: I

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EXHIBITS: See Index

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

----- x
DANIEL A. FERRIE

Plaintiff

v.

No. 04CV12068JLT

KMART CORPORATION

Defendant
----- x

DEPOSITION of DANIEL FERRIE

Monday, February 28, 2005

10:00 a.m.

Foley & Lardner, LLP

111 Huntington Avenue

Boston, Massachusetts 02199

Michelle Keegan, Court Reporter

Daniel Ferrie

02/28/2005

26

1 soured me. I decided to leave.

2 Q. Now, we know that you left employment at
3 Kmart March 2nd, 2004, correct?

4 MR. WOOD: Objection. You can answer.

5 A. March 1st, 2004.

6 Q. And since that time have you been employed?

7 A. No.

8 Q. And are you physically capable of working?

9 A. No, not at this time.

10 Q. In any capacity?

11 A. Not at this time.

12 Q. Have you been physically capable of working
13 at any time since March 1st, 2004?

14 A. No, not full-time.

15 Q. And is that due to your back injury?

16 A. Yes.

17 Q. And have you ever been -- Have you been
18 given any indication by your physicians as to
19 whether or when you'll ever be able to return to
20 work on a regular basis?

21 A. I have not.

22 Q. What were you about to say? You just what?

23 A. I just returned to Dr. Jouve. And I'm going
24 to enter physical therapy, so hopefully shortly I

Daniel Ferrie

02/28/2005

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1 specifically. You testified that you've been
2 incapable of working at least since the time you
3 left Kmart?

4 A. Right.

5 Q. Have you been incapable of working since you
6 incurred your injury, which I believe was on
7 December 17th, 2003?

8 A. That's correct.

9 Q. Have you been incapable of working since
10 that time?

11 A. That's correct. Right.

12 Q. And just briefly, the first document,
13 Exhibit 2 there, is that the application for
14 management employment that you submitted to Kmart?
15 I know it's hard to read.

16 A. Yes.

17 Q. And that's all your handwriting?

18 A. Yes.

19 Q. And how did it come to be that you applied
20 for employment at Kmart?

21 A. They were recruiting.

22 Q. How did you learn that?

23 A. From the Internet.

24 Q. And you were looking for employment at that

Daniel Ferrie

02/28/2005

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1 A. Yes.

2 Q. Okay. So if it had been reduced, you still
3 got to use the 10 percent discount?

4 A. Yes.

5 Q. When you said before off of regularly-
6 priced merchandise, it's not exclusively regularly-
7 priced merchandise?

8 A. Yes, it is.

9 Q. Can you explain? I think I'm confused,
10 then. Could you just explain to me the distinction?

11 A. Regularly-priced merchandise is the price
12 the merchandise is now selling at. So you could use
13 your discount card if something is seasonally marked
14 down and that became the new pricing. You could not
15 use it on sale items and exclusions. That was
16 temporary price reduction.

17 Q. Okay. So there's a difference between
18 marked down -- seasonally marked down and sales
19 price?

20 A. Yes.

21 Q. Now, the letter says that you were being
22 hired as a pacesetter manager in training at Kmart
23 3879. And it says the store is located in
24 Graftree. I assume that was Braintree.

Daniel Ferrie

02/28/2005

32

1 A. Yes.

2 Q. Was that the store you worked at the entire
3 time?

4 A. No.

5 Q. So can you tell me, what was a Kmart
6 pacesetter manager in training?

7 A. Pacesetter training was a fast track to
8 store management.

9 Q. Okay. I assume you were eligible for that
10 because you had retail management experience before?

11 A. I would assume, yes.

12 Q. And how long were you in that program, that
13 management training program?

14 A. Six weeks at that store.

15 Q. In Braintree?

16 A. Yes.

17 Q. And when where did you go?

18 A. To 7605.

19 Q. Store number 7605?

20 A. Yes.

21 Q. Where was that?

22 A. South Bay.

23 Q. In Dorchester?

24 A. Yes.

Daniel Ferrie

02/28/2005

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1 Q. Were you in the Dorchester store or the
2 South Bay store for the remainder of your employment
3 at Kmart?

4 A. No.

5 Q. How long were you at the Dorchester store?

6 A. Two years.

7 Q. So was that -- You were six weeks in
8 Braintree as a pacesetter trainee?

9 A. Uh-hmm.

10 Q. And at the end of that training program you
11 went to the South Bay store?

12 A. Correct.

13 Q. For two years, approximately?

14 A. Approximately two years.

15 Q. And what did you do while you were at the
16 South Bay store?

17 A. I was brought to the South Bay store as the
18 assistant soft lines manager. I then was promoted
19 to the hard line manager's position, was promoted to
20 the replenishment manager's position, and then was
21 promoted to the store manager pro tem position.

22 Q. All at South Bay?

23 A. All at South Bay.

24 Q. I'm going to back up a little bit. Just

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1 tell me, what is soft lines versus hard lines?

2 A. Soft lines is all the clothing -- categories
3 of clothing, and hard lines is the -- all hard
4 lines, the health and beauty aids, the hammers,
5 automotive, toys.

6 Q. Then you went from soft lines to hard lines
7 to replenishment manager?

8 A. Replenishment.

9 Q. What is replenishment manager?

10 A. Replenishment manager was a title change
11 from operations manager. It involved the inner
12 store logistics, flowing the merchandise, and the
13 operational aspect of the store.

14 Q. Inside the store itself?

15 A. Inside the store itself, yes.

16 Q. Not from distribution to the store but --

17 A. No. Within the store itself.

18 Q. Okay. And you never had the title
19 operations manager, or did you?

20 A. There was no operations manager at that
21 time.

22 Q. You said that this was a --

23 A. This was a revamping of that terminology.

24 Q. But when you took the job it had already

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1 been revamped?

2 A. It had been revamped, yes.

3 Q. And then you went to, did you say, manager
4 pro tem?

5 A. Manager pro tem. Store manager pro tem.

6 Q. What was that?

7 A. I was considered a store manager in waiting
8 for a store.

9 Q. While you were in that role, what did you
10 do?

11 A. Everything the store manager would do,
12 making decisions about the store. Everything the
13 store manager would do.

14 Q. But was there a store manager already?

15 A. Yes, there was.

16 Q. Okay. Who was that?

17 A. Brian Favor.

18 Q. So Brian Favor was the store manager at
19 South Bay?

20 A. Yes.

21 Q. And you were the manager pro tem working at
22 South Bay?

23 A. Yes.

24 Q. Was there an assistant store manager?

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1 A. No.

2 Q. Did the pro tem operate like an assistant
3 store manager?

4 A. No.

5 Do you want me to expound?

6 Q. Please.

7 A. All levels were assistants. The soft lines
8 manager was an assistant, the hard lines manager was
9 an assistant, the replenisher was an assistant.

10 Q. Okay.

11 A. And all had sectional areas of
12 responsibility.

13 Q. But when you became a manager pro tem, did
14 you no longer have a sectional area of
15 responsibility?

16 A. I no longer had a sectional area of
17 responsibility. I had entire store manageability.

18 Q. But reporting to the manager himself?

19 A. Reporting to the store manager.

20 Q. Okay. Was that the position you had at the
21 time you left that store?

22 A. Yes.

23 Q. Okay. And where did you go upon leaving
24 that store?

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1 A. Somerville, Massachusetts.

2 Q. You went to Somerville. In what capacity?

3 A. Store manager.

4 Q. And how long were you in the Somerville
5 store?

6 A. Eight or nine months.

7 Q. You were the store manager in Somerville for
8 eight or nine months?

9 A. Correct.

10 Q. And where did you go after that?

11 A. Fall River, Massachusetts.

12 Q. Why did they move you out of Somerville, or
13 why did you move out of Somerville?

14 A. I was asked to move.

15 Q. Okay. Do you know why?

16 A. Yes.

17 Q. Why was that?

18 A. The regional vice president, Ryan Shea,
19 called me and told me that they needed a high
20 profile manager to go to Fall River, Massachusetts,
21 that the chairman of the board, Chuck Conway, had
22 asked him to find a high profile manager to run the
23 Fall River store.

24 Q. Why?

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1 A. Due to the fact that it would be the first
2 time -- Wal-Mart had rented an empty space formerly
3 occupied by Bradlees at one end of the plaza at the
4 Harbor Mall, and we had the other store. And they
5 felt at that time that it would draw a lot of the
6 people out of New York, a lot of the wall
7 street-type people, because it would be the first
8 time two stores operated under the same roof line.
9 And they needed someone there that would be able to
10 handle the job and talk to them.

11 Q. Oh, he thought that wall street analysts
12 would be coming into the store?

13 A. They felt that the analysts would pay close
14 attention to that particular store at that time
15 because of the situation like that.

16 Q. And did that in fact happen?

17 A. They never revamped the store.

18 Q. Who never did?

19 A. Kmart.

20 Q. I see. So you -- How long were you there in
21 Fall River for?

22 A. A short period of time, maybe five or six
23 months.

24 Q. Okay. And then what happened?

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1 A. I went to Braintree.

2 Q. Which is where you remained for the
3 remainder?

4 A. For the remainder, correct.

5 Q. Okay. How was it that you went from Fall
6 River to Braintree?

7 A. I was in the southeastern district. Again,
8 we received a call from Ryan Shea saying that the
9 Braintree Kmart was in trouble. The store manager
10 had had a heart attack, had not been there, and the
11 store was in deplorable condition, and the town was
12 there ready to close the store, and he needed me to
13 go there.

14 Q. What happened to the Fall River store after
15 you left?

16 A. It was given to another manager.

17 Q. Okay. And tell me Ryan Shea's title again.

18 A. It was regional vice president.

19 Q. And did you report to him as store manager?

20 A. No, I did not.

21 Q. Who did you report to when you were store
22 manager at Somerville?

23 A. John Swank.

24 Q. What was his title?

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1 A. District manager.

2 Q. Who did you report to when you were store
3 manager in Fall River?

4 A. Chuck James.

5 Q. And he was district manager?

6 A. Yes.

7 Q. And who did you report to when you were the
8 manager of Braintree?

9 A. John Swank.

10 Q. And what about when you worked at South Bay?

11 A. David Napier.

12 Q. So Napier was the district manager who had
13 South Bay under his responsibility?

14 A. Yes.

15 Q. Okay. But while you were at South Bay you
16 didn't report directly to him because the store
17 manager reported directly to him?

18 A. Correct.

19 Q. And how big was a district? How many stores
20 would be in a district?

21 A. It varied.

22 Q. I'm just wondering because, for example,
23 Somerville and South Bay were not in the same
24 district?

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1 A. At a different time. Napier had been moved,
2 and they redistricted. They were both in the same
3 district.

4 Q. Okay. But while you were at South Bay that
5 was his?

6 A. I don't understand what you're asking me.

7 Q. While you were at South Bay Napier was the
8 district manager?

9 A. District manager, yes.

10 Q. But sometime after you left the South Bay
11 store there was some redistricting?

12 A. Yes.

13 Q. And Swank became responsible for that?

14 A. Swank was promoted and became responsible
15 for that store.

16 Q. And what happened to Napier?

17 A. Napier went to the New Hampshire district.

18 Q. I see. Okay. So you've never worked
19 directly for Napier?

20 A. No.

21 Q. In your role as store manager, you reported
22 either to James or to Swank?

23 A. Correct.

24 Q. Got it.

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1 (Recess taken)

2 Q. I've shown you a document marked as Exhibit
3 6, which is Bates-stamped Kmart 026 through 031.
4 And I know there are a couple of blank pages in
5 there. Apparently, that's how they were originally
6 photocopied.

7 Have you had a chance to look at this
8 document?

9 A. Yes.

10 Q. And are you familiar with this?

11 A. Yes.

12 Q. And could you tell us what it is?

13 A. It's a contract between store managers and
14 Kmart.

15 Q. So did you sign this upon becoming a store
16 manager?

17 A. No.

18 Q. After you were already a store manager?

19 A. Yes.

20 Q. And that's your signature on the last page,
21 82500?

22 A. Yes.

23 Q. And if you'd look at the page that's stamped
24 030 on the bottom. It's the second to last page.

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1 Do you see the section that's titled "Selling prices
2 and honest operation"?

3 A. Yes.

4 Q. Okay. Could you read that section to us.
5 It's pretty short.

6 A. "The manager will see that all selling
7 prices conform with pricing policy issued by the
8 international headquarters of the company and will
9 maintain honest operation in every managerial
10 responsibility assigned to the manager."

11 Q. And did you understand that to be the
12 company policy?

13 A. At that time, yes.

14 Q. Was it anything different at any other time?

15 A. Yes.

16 Q. Okay. At what time was it different?

17 A. When the -- When this corporation failed and
18 the new corporation took over.

19 Q. When was that?

20 A. 2003.

21 Q. In 2003 that policy changed?

22 A. The policy was changed, yes.

23 Q. And what did the policy become?

24 A. It became that the new owners of the company

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1 Q. And they didn't -- The notion that the store
2 manager was obligated to maintain honest operation
3 in every managerial responsibility assigned to the
4 manager, that remained intact, correct?

5 A. Correct. Yes.

6 Q. Did you ever sign an agreement after this
7 one, a similar agreement after this one; do you
8 know? By "this one," excuse me, I'm referring to
9 Exhibit 6.

10 A. We received many documents. I don't
11 remember particularly what they were. We received a
12 lot of documents that had to be signed.

13 Q. Okay. Do you recall when the store went
14 into bankruptcy, the company?

15 A. I'm not sure what the official date was. I
16 can't be honest. I can't even guess. I'm not sure
17 when it was.

18 Q. Was it the end of '03?

19 A. No. It was in the beginning, I believe.

20 Q. The beginning of '03?

21 A. The end of '02 or the beginning. I'm not
22 sure when.

23 (Exhibit Numbers 7 and 8
24 marked for identification)

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1 conversion rates. What were those?

2 A. Smart Plan conversion rates were the rate
3 the company wanted you to turn your Smart Plans,
4 merchandise eligible to receive extended warranties,
5 to convert to those rates.

6 Q. Meaning the rate on which you sold extended
7 warranties for eligible product?

8 A. Yes.

9 Q. So a Smart Plan is an extended warranty?

10 A. Yes.

11 Q. If I bought some kind of electronics, the
12 question is, would I also buy an extended warranty
13 on top of that?

14 A. Correct.

15 Q. For an additional price?

16 A. Right.

17 Q. And that extended warranty was called a
18 Smart Plan?

19 A. Correct.

20 Q. And do you recall what the Smart Plan
21 conversion rates were supposed to be?

22 A. The company wanted a Smart Plan conversion
23 rate of 16 percent.

24 Q. Of 16 percent?

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1 A. Right. The company averaged under 10
2 percent.

3 Q. Okay.

4 A. For all the stores.

5 Q. All stores nationally or --

6 A. All stores nationally.

7 Q. Now, if we go to Exhibit 8 -- So now this
8 appears to be the appraisal for fiscal year '02,
9 which I'm assuming then would have been February 1,
10 '02 to January 31, '03. Does that sound right?

11 A. I believe so, yes.

12 Q. And again, Mr. Swank prepared this?

13 A. Yes.

14 Q. And for what store, then, would that have
15 been at?

16 A. I believe this is Braintree.

17 Q. And I'm going to take you to -- ask you to
18 go to the third page of that document, which is
19 Kmart 0048. And do you see the section that says
20 "Decision quality"?

21 A. Uh-hmm.

22 Q. Okay. I'm going to read the manager's
23 comments there. "Dan's decision-making capabilities
24 are strong in regards to handling operational and

1 A. I said I told him that -- I didn't tell him
2 he would lose his job. I told him he would be
3 removed from the position he had, up to and
4 including termination. And I put that in writing.

5 Q. Did you tell him where he had to get the
6 conversion rate to?

7 A. I told him what the company standards were,
8 yes.

9 Q. You said the company standard was 16
10 percent?

11 A. Correct.

12 Q. Did he have to achieve 16 percent?

13 A. No. The acceptable level was 10 percent.

14 Q. So he had to get over 10 percent?

15 A. He had to get 10 percent or above.

16 Q. Okay. And did you ever speak to any of the
17 cashiers or other employees about --

18 A. I spoke to every employee at meetings. I
19 spoke to every employee in that store about Smart
20 Plan conversion.

21 MR. WOOD: And Dan, once again, just
22 make sure he's done asking the question before you
23 answer.

24 THE WITNESS: Okay.

1 customer had taken the cash card, had refused to do
2 the transaction and had left the store with the cash
3 card.

4 Q. Okay. What is a cash card?

5 A. A cash card is like a gift card. It's used
6 for people who do not have cash receipts for
7 refunds, they give them a cash card. If you want to
8 send one to your son or daughter or mother, a gift
9 card, they call them cash cards. Same thing. It's
10 used for a variety of things.

11 Q. You can put \$50 or \$100, whatever it is?

12 A. Exactly. Sure.

13 Q. And does it look like a plastic credit card?

14 A. It looks like a plastic credit card,
15 correct.

16 Q. And so as I understand it, someone had
17 purchased a cash card in the Nashua store using a
18 stolen credit card?

19 A. Correct.

20 Q. And is that, like, a scam, a common kind of
21 way of stealing? Why would they do that?

22 A. That would be a way of stealing because now
23 they could -- instead of being caught with a cash
24 card -- when they steal a credit card, they have a

1 Q. Was it a conversion rate -- Was it
2 calculated per sale or per dollar?

3 A. Per opportunity.

4 Q. Okay. Per sale, sale opportunity?

5 A. Right, sale opportunity.

6 Q. Now, at some point it came to your attention
7 that Reeves and/or others would be coming to do an
8 investigation at the store?

9 A. No, it never came to my attention there
10 would be an investigation at my store.

11 Q. When did you first learn there was an
12 investigation in your store?

13 A. After I was injured.

14 Q. Well, how did you learn?

15 A. I talked to Swank.

16 Q. When?

17 A. Swank called me every day -- was calling me
18 every day after my injury. He called me on a daily
19 basis.

20 Q. Well, your injury occurred on the -- was it
21 the 17th?

22 A. The 17th, correct.

23 Q. And tell me about -- where did the injury
24 occur? Where did the injury occur?

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1 A. At the Braintree store.

2 Q. Where?

3 A. Behind the service desk.

4 Q. And how did it occur?

5 A. The store had a second level that the
6 management could sit up behind the desk, a higher
7 level, pedestal level, and look out.

8 And I like to sit up there in the
9 morning. I could see everybody who was coming in
10 and sit and write my daily notes up there. And
11 that's what I was doing.

12 Q. And then what happened?

13 A. I got up to come down and walk down the
14 stairs and hit a shopping bag and fell down.

15 Q. Was there anyone there to witness it?

16 A. There was Martin Hall. Lea South was there,
17 was walking by with another girl. And there was a
18 girl behind the register or behind her. I can't
19 remember what her name was. She was working behind
20 the service desk.

21 Q. Martin Hall and Lea South. And you already
22 told us who Lea South was. Who is Martin Hall?

23 A. He was one of my assistants.

24 Q. Your assistants. What was his title?

1 audit or regular audit like you were -- you
2 testified earlier that you were expecting, correct?

3 A. We were expecting a regular audit.

4 Q. That's not what this is?

5 A. Apparently not.

6 MR. WOOD: Objection.

7 A. Apparently not.

8 Q. And to your knowledge, did they ever come in
9 and do a regular audit?

10 A. I don't know. Not to my knowledge. I don't
11 know.

12 Q. But your testimony is that as of December
13 17th, you didn't know she was coming in on the 18th?

14 A. I didn't know when she was coming in.

15 Q. Now, you went out on the 17th. Did you ever
16 try to return to work?

17 A. Two times prior to that. Actually, a total
18 of three times. Two times prior to the first.

19 Q. And when was the first time?

20 A. Around -- December 28th or 29th. It was at
21 the end of December. And then probably mid to late
22 January I tried to go in.

23 Q. And what happened?

24 A. I couldn't walk. My back was really

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1 bothering me. I couldn't walk. I had to leave and
2 go home. I called Swank and told him I had to leave
3 and go home.

4 Q. Were you there for a full day either time?

5 A. No. I was there one time for about four
6 hours and one time for a couple of hours only.

7 Q. And then you came in on March 1st?

8 A. Came in on March 1st.

9 Q. Well, on the time you came in in late
10 December, had you told Swank you were going to try
11 to come in?

12 A. Sure. I talked to him that morning.

13 Q. And the same thing in January?

14 A. Yeah.

15 Q. And then was it the same when you went and
16 came back in in March?

17 A. Yes.

18 Q. Between the time you went out on December
19 17th and the time you tried to come back the first
20 time, you testified that four or five days after you
21 went out Swank told you they had come in and done an
22 audit and identified those three issues.

23 A. Right.

24 Q. That some guns were sold that weren't pre

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1 A. Yeah.

2 Q. Do you know whose name that is?

3 A. I do not know his name. I don't know how to
4 pronounce it. I don't know who he is. I know who
5 he is by sight now because it was the first day I
6 had met him.

7 Q. Was Swank no longer your district manager?

8 A. He had been transferred to New York.

9 Q. When was Swank transferred to New York?

10 A. Sometime in January, February. I don't
11 know.

12 Q. So then there was a new manager?

13 A. A new district manager.

14 Q. And the first time you met him was on March
15 1 when you came back to work?

16 A. Right.

17 Q. He was in the store when you got there?

18 A. Right.

19 Q. Did you expect him to be there when you got
20 in?

21 A. No, not really.

22 Q. Was anyone else there while you were away --
23 when you came in to meet with you?

24 A. To meet with me?

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1 Q. Yeah.

2 A. Yeah. John Reeves, the loss control
3 district manager.

4 Q. Okay. And so you met with Reeves and this
5 man -- this new district manager?

6 A. Right.

7 Q. But you don't believe that he ever presented
8 you with --

9 A. I know he didn't present it to me.

10 Q. -- this form?

11 A. Never did.

12 Q. Okay. I'm going to show you a document
13 we're going to mark as Exhibit 14.

14 MR. RUBIN: why don't we go off for a
15 second.

16 (Off the record)

17 (Exhibit Numbers 14 and 15

18 marked for identification)

19 Q. Have you had a chance to take a look at the
20 documents we've marked as Exhibits 14 and 15?

21 A. Yes.

22 Q. Now, Exhibit 14, is that your handwriting?

23 A. Yes.

24 Q. And that's your signature at the end?

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1 A. Yes.

2 Q. And then on Exhibit 15, did you type that
3 document?

4 A. Yes, I did.

5 Q. And where did you do that?

6 A. At the HR office.

7 Q. At the store?

8 A. Yes.

9 Q. And just for the record, Exhibit 14 is
10 Bates-stamped Kmart 102 through Kmart 105, and
11 Exhibit 15 is Bates-stamped Kmart 106 through 107.

12 Is Exhibit 15 a verbatim transcription
13 of Exhibit 14?

14 A. I don't believe it is.

15 Q. Okay. I'm going to ask you if you could
16 read 14 to us. I know it's long. But just so that
17 we'll have at least one clear version of it.

18 A. Okay. "On 3/1/04 I had been asked to make a
19 statement to incidents relative to" -- I can't read
20 the word.

21 Q. Would it be "accusation"?

22 A. I guess it could be "accusation." I can't
23 read the word.

24 -- "made by unknown people, unknown" --

1 "I have even been accused of stealing a
2 \$4 phone; however, closed-circuit cameras proved by
3 the loss control showed otherwise.

4 "Further and final, I deny any and all
5 allegations relative to conversations I was alleged
6 to have had and to have done anything. I only ask
7 one question, what did I gain by doing what was
8 alleged of me during this," something, something,
9 "Smart Plans" --

10 Q. "During the holiday season"?

11 A. Yeah, that could be "holiday season."

12 "Smart Plans were a priority to sell.
13 However, to" -- I can't read the next two words --
14 the next three words. "The store performed" -- I
15 can't -- I think that should have been -- I think it
16 was a negative word there, "terrible" or something.
17 "I was made to work Sundays without a day off by
18 Mr. Swank.

19 "4. I did talk to cashiers and did
20 check about every two hours on Smart Plan sales but
21 never to the alleged -- but never to the alleged
22 incident."

23 Q. Okay. Thank you. Well, tell me what
24 happened when you came in on March 1. Let's go back

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1 to March 1. You go into work for the first time in
2 about a month?

3 A. Yeah, about a month, month and a half.
4 Right.

5 Q. And then you had only been in for a few
6 hours that previous couple of times?

7 A. Right.

8 Q. Were other people in the store expecting
9 you? Did the store know you were coming?

10 A. I called everybody and told them that the
11 doctor had wanted me to take more time off, but I
12 didn't want to, that I was going to be leaving. And
13 I call Mike Howell -- I had never met him before.

14 Q. New district manager?

15 A. He was the New district manager. I left a
16 message at his office in Somerville.

17 Actually, I believe I had a conversation
18 with him that I would have to take time off. The
19 doctor told me I could come back but leave if I had
20 to and that I would be going to Dedham for physical
21 therapy and I would have to leave for a couple hours
22 every day to go to physical therapy. So he told me
23 to come in on Monday.

24 When I got there, I got there Monday

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1 morning about 7 o'clock in the morning, and Julie
2 Manning was the opening store manager at that time.
3 And when I walked in she says, "John Reeves and Mike
4 Howell," whatever his name is, "are down in your
5 office."

6 So I walked down to my office. They
7 were in there. I said, "Oh, what's up?" They said,
8 "Dan, we're here to ask you some questions." And I
9 said, "About what?" And they laid this on me.

10 Q. Laid what on you?

11 A. That people had made the allegations and
12 that that's what they were there for that morning.

13 Q. Which allegations did they apprise you of?

14 A. All of them. Everything that was in that
15 report was what they apprised me of.

16 Q. The Smart Plans?

17 A. The Smart Plans, the bulk sale and the --

18 Q. Firearms?

19 A. -- firearms. And they kept saying about --
20 I remember Reeves -- It was Reeves who was doing
21 most of the talking about \$1.99 watch sales, \$1.99
22 watch sales.

23 Q. Yup. Okay. And what did you say?

24 A. I said, "Let's do what we have to do." They

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1 report. The same form of document but nothing on
2 it.

3 Q. If you look at Exhibit...

4 MR. WOOD: 13.

5 Q. Exhibit 13. Was it that form?

6 A. It was that form blank, yes.

7 Q. Was your name filled into it?

8 A. No, not at all.

9 Q. All right. So you saw that in the HR
10 office?

11 A. Yeah.

12 Q. And then what happened?

13 A. I waited for them to come out, and I
14 questioned them about it.

15 Q. What did you say?

16 A. I said, "I want to ask you a question." I
17 said, "I believe you have already predetermined that
18 you are going to terminate me." And John Reeves
19 said, "Absolutely not." He said, "We're here to
20 take a statement." He said, "It won't be up to us.
21 It will be up to regional HR."

22 Q. Okay.

23 A. I said, "Why would I be terminated? Tell me
24 what violations I've made. Show me what violations

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1 I've made."

2 And they said, "Let's take the statement
3 and see where we go from here." They told me,
4 "Don't worry about it at this time." I was taken by
5 total surprise as the week before that I was called
6 by John Swank from New York asking me to transfer to
7 New York to work in one of his stores on Long
8 Island.

9 Q. What did you say to Swank when he asked?

10 A. I told him that a move to Long Island would
11 probably not be in it for me because of my family.
12 I said I wouldn't count anything out, that there
13 would be a lot of factors I would have to consider.

14 Q. So Reeves and Michael told you, "The
15 decision hasn't been made. It's not up to us to
16 make the decision. Don't worry about that for now"?

17 A. Right.

18 Q. And then what happened?

19 A. They asked me if I'd give a statement.
20 Well, they talked to me about it. I gave them the
21 same answers.

22 They asked me about -- They wouldn't
23 give me any specific names. I asked them for
24 specific names so I could answer the allegations.

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1 They said they couldn't do that. Then they asked me
2 at some time to make a statement that morning.

3 Q. Okay. And is that when you wrote down this
4 written statement, this Exhibit 14?

5 A. Yes.

6 Q. Now, if we look at Exhibit 15, when did you
7 write that?

8 A. About 35 to 40 minutes later.

9 Q. Well, how did that come about?

10 A. I was in such pain at that point from
11 sitting for so long that my handwriting is just
12 about illegible. When they transferred it, they
13 couldn't read it. They asked me if I'd mind putting
14 it in type.

15 They got the type up on the HR office,
16 which was the only computer with a word processing
17 program in it. I went in there and did it.

18 Q. So that's when you wrote this up?

19 A. Yeah.

20 Q. Earlier you said that employees in the store
21 had tried to get other managers terminated?

22 A. They tried to get the store manager, meaning
23 me, terminated.

24 Q. Not previous managers. You?

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1 because these are people who supposedly have
2 knowledge relative to this case.

3 Mr. Ferrie, you're listed first, right?

4 A. Uh-hmm.

5 Q. And then Napier. We've talked about Napier?

6 A. Right.

7 Q. Swank, we've talked about him?

8 A. Right.

9 Q. Ryan Shea, we've talked about him?

10 A. Uh-hmm.

11 Q. Daniel LNU, is that last name unknown?

12 A. Last name unknown.

13 Q. Who is Daniel?

14 A. Another New Yorker that received a district
15 manager's promotion ahead of me.

16 Q. Was he one of the ones we talked about?

17 A. No.

18 Q. What district manager job did he get?

19 A. He got southern New Hampshire.

20 Q. And when was that?

21 A. When I was in -- Right when I went to Fall
22 River. Right after I went to Fall River.

23 Q. And approximately when did you go to Fall
24 River again?

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1 A. It was in '01, right before.

2 Q. And was this guy Daniel, was he younger than
3 you?

4 A. Much younger and not experienced.

5 Q. Okay. Charles James, we talked about him,
6 right? He was the district manager?

7 A. Right.

8 Q. Is there anything about Charles James that
9 would be -- that we haven't talked about that's
10 relevant to your case here?

11 A. Not that I know of. He was a younger man
12 that got hired in as a district manager from Wal-
13 Mart.

14 Q. Were you already employed when James got
15 hired?

16 A. Yes, I was.

17 Q. Were you a store manager yet?

18 A. Yes, I was.

19 Q. You were a store manager when Charles James
20 got hired to be district manager?

21 A. Right.

22 Q. They both talk about that -- both Daniel and
23 Charles James, that they would have knowledge of
24 your employment and/or discrimination. What do they

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1 know about your -- either of them know about your
2 employment or discrimination?

3 A. Well, James -- I worked directly for James.

4 Q. Did he ever discriminate against you?

5 A. Did he ever discriminate against me? No.

6 Q. And what about Daniel, would he have any
7 knowledge of your employment or discrimination?

8 A. He was part of the New York crew. And I
9 believe he would.

10 Q. What would he know?

11 A. I believe he was privy to conversations. He
12 was privy to numerous conversations on weekends and
13 weekend outings.

14 Q. And on what do you base that?

15 A. Through conversations that I had with him
16 after.

17 Q. After what?

18 A. After the outings and things that he told me
19 about.

20 Q. What did he say?

21 A. He said he would tell me things about, "Your
22 name got brought up this weekend. This one said
23 this. This one said that."

24 Q. Who said what?

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1 A. Well, it was Ryan, Swank, him and other
2 people. He said, "Ryan said this" or "John said
3 that."

4 Q. But what is it that they supposedly said
5 about you?

6 A. It would usually be something negative.

7 Q. Like what?

8 A. One time Ryan called me a fat troll.

9 Q. So this guy Daniel told you about that?

10 A. Yeah.

11 Q. Any other instances?

12 A. I can't remember at this time. I don't
13 remember at this time.

14 Q. Well, you remember that one specifically?

15 A. I remember that one specifically.

16 Q. Do you remember anything that Swank ever
17 supposedly said about you out of your presence?
18 You've already talked about what he said to you
19 supposedly to your face.

20 A. I don't. I can't remember at this time.

21 Q. What about David Bennett, who was he?

22 A. David Bennett was the gentleman who was
23 promoted and brought back to the company, the one
24 that had the poor performance and had been brought

Daniel Ferrie

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1 back to the company.

2 Q. And would he know anything specifically
3 about your employment or discrimination?

4 A. He would know that he got brought back over
5 me based on information I was a better performer.

6 Q. He would know about his own experience?

7 A. He would -- And on the metrics of
8 performance, he would know I was a better performer.

9 Q. How would he know that?

10 A. He would know what his metrics were and he
11 would read what my metrics were and compare them.

12 Q. Had you done that in the past? Have you
13 seen that information?

14 A. Certain information, yes.

15 Q. What information?

16 A. Certain information that when he ran a store
17 in New York, that he had, I think, a 9 and a half
18 percent shrink, almost a 10 percent shrink.

19 Q. This is the information that you said that
20 you knew because it was just generally known?

21 A. Yeah.

22 Q. Anything else? Any other information?

23 A. No.

24 Q. Reeves we've already talked about. Anything

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1 we haven't talked about about Reeves?

2 A. No.

3 Q. Who is Mike Lardino?

4 A. Mike Lardino was the district -- was the
5 regional HR person during the Shea administration.

6 Q. All right. What would he know about your
7 employment or discrimination?

8 A. He knew that -- He was involved in the
9 conversations and knew about my offer as district
10 manager in the southern district.

11 Q. How do you know that?

12 A. Because I was told conversations had been
13 had with Lardino, Swank and Shea.

14 Q. This is what Swank told you?

15 A. Exactly.

16 Q. And that you're going to be offered this
17 job?

18 A. Uh-hmm.

19 Q. Did anyone ever say to you anything after
20 that about why you didn't get the job?

21 A. Because they hired Bennett back.

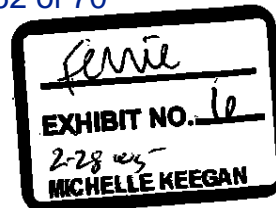
22 Q. Who told you about it?

23 A. Shea called me.

24 Q. Shea called you and said what?

TAB 3

**KMART CORPORATION
STORE MANAGEMENT**



THIS CONTRACT between Kmart Corporation, a Michigan Corporation, hereinafter called the Company and Daniel Ferrie hereinafter called the Manager.

**TERM OF
CONTRACT**

The Company agrees to, and does hereby, employ the above individual in a store management position as described in Compensation Plan Document.

COMMITMENT

The Manager agrees to devote best efforts and undivided time and attention to the conduct of business of the Company and to abide by Company policies.

COMPENSATION

The Company agrees to pay the Manager a minimum annual base salary set forth in the Compensation Plan Document. If the Manager is actively employed in the same position as set forth in Compensation Plan Document at the end of the fiscal year, the Manager will be paid Incentive Compensation for the individual personal performance as set forth in Compensation Plan Document.

**TIME OF
PAYMENT**

The Compensation to be paid to the Manager as aforesaid shall be payable following the end of the fiscal year, when the profit before U.S. income tax of said Store shall be computed, provided that the Company may, if it deems it advisable, select some other date as the time when the Pre-Tax Profit shall be computed, and further provided, that the Company agrees to pay the Manager currently an established base salary. The salary is payable each month by check from the International Headquarters of the Company. No advances are to be made to the Manager from the funds of the Store covered by this Contract.

**PRE-TAX
PROFIT**

Where applicable, Pre-Tax Profit shall be defined as the Total Gross Profit and Fees, less the Total Controllable Operating Expenses, Overhead and Occupancy charges, before U.S. Income Taxes.

COMPUTATION

The Pre-Tax Profit of said Store shall be computed covering the business of the Store for the entire fiscal year or for the entire time less than one fiscal year that the Store is in operation.

the following information is being provided to you for your information only. It is not intended to be used for any other purpose. The information is being provided to you for your information only. It is not intended to be used for any other purpose. The information is being provided to you for your information only. It is not intended to be used for any other purpose.

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INVENTORY

There shall be taken at the close of a cycle period, or at the nearest convenient date thereto (provided that the Company shall have the right to select some other date as the end of its business year or cycle), a true and correct inventory and account of the Store covered by this Contract. In taking said inventory, unsaleable merchandise will not be taken into account, depreciated merchandise shall be inventoried at a price related to its present market value, and old or unseasonable merchandise shall be valued in accordance with such uniform rules which the Company shall from time to time adopt. The Company reserves the right to cause an inventory to be taken at any time.

**CONCLUSION
OF
INVENTORY**

The Pre-Tax Profit of said Store shall be computed by the Company, and the Manager shall receive the Compensation calculated as aforesaid, less any Company loans due at the end of the fiscal year.

ERRORS

If through error, or other cause, the Compensation paid is afterward found to be erroneous, the Compensation shall be recalculated on the correct basis of earnings. The difference in Compensation then determined shall be paid by either party to the other of whatever balance is due.

**COMPENSATION
IN FULL**

The Compensation of the Manager provided for in the Compensation Plan Document is to be the total Compensation of the Manager for all services rendered to the Company. The Manager may be called upon to perform work and services for the Company of any nature in connection with the business of the Company or incidental thereto, and agrees to perform such services as a part of the undertaking of this Contract. The Compensation provided for in this Contract is to be in full payment for all services of every nature.

**MANAGER'S
AUTHORITY**

The Manager is not a general agent and shall have no authority to use the name of said Company to endorse, guarantee or otherwise become a surety for any person, or bind the Company for the payment of money. The authority of the Manager is to be confined to the endorsement of checks for deposits, receipting of bills and goods from carriers, and such other incidental matters as may be necessary to properly conduct said Store. The Manager shall be liable to the Company for any abuse of authority by said Manager, and any loss, damage or expense, incurred by Company because of, or arising out of, any acts or dealings by the Manager, in excess of herein stated authority, may be treated by the Company as a debt owing to it by the Manager and may be deducted as provided in the "Lien on Compensation" section of this document.

the following information: (1) the name of the person who
provided the information; (2) the date the information was
provided; (3) the source of the information; and (4) the
method of collection of the information.

These findings are based on the information provided by the
person who provided the information, and are not based on
any other information.

The following information was provided by the person who
provided the information: (1) the name of the person who
provided the information; (2) the date the information was
provided; (3) the source of the information; and (4) the
method of collection of the information.

**LIEN ON
COMPENSATION**

The Company shall have a lien upon the Compensation due to the Manager for any indebtedness of the Manager to the Company. The Company may deduct and retain from any sum found to be due the Manager to pay any indebtedness or part thereof due and owing from the Manager to the Company with interest at the current prime rate, unless specifically exempted, and pay the balance of said sum to the Manager in full settlement and payment of the Compensation due by the Company.

FIRE

In case the Store covered by this Contract shall be totally destroyed by fire, or other cause beyond the control of either party, this Contract shall thereupon terminate without notice to the Manager and the Manager shall receive Compensation through the date of destruction as provided in the "Termination" section of this document.

**NOT A
CO-
PARTNERSHIP**

This instrument shall in no way be deemed a co-partnership agreement. The Compensation as provided in the Compensation Plan Document is to be regarded as the Compensation of the Manager, dependent upon the success of the Company's business as conducted by the Manager in the locality covered by this Contract.

**SELLING PRICES
AND HONEST
OPERATION**

The Manager will see that all selling prices conform with pricing policy issued by the International Headquarters of the Company and will maintain honest operation in every managerial responsibility assigned to the Manager.

TERMINATION

The Company has, and hereby reserves, the right to terminate the relations established by this Contract with or without cause at its discretion. This termination may be without notice to the Manager and the Manager shall have no claim for any Compensation beyond the date of discharge. It is understood and agreed by the Manager that the nature of the employment relationship as set forth in this Paragraph cannot be modified except by an express written agreement signed by the Vice President of Human Resources; that this Paragraph supersedes all prior agreements either express or implied; and that the terms of this Paragraph shall remain in effect for so long as the Manager remains employed by the Company in any capacity. The Manager may sever relations with the Company under this Contract at any time, and thereupon, this Contract shall become null and void and the Manager shall not be entitled to participate in any manner in the Incentive Compensation as provided in Paragraph 3 hereof, until the time relations with the Company shall be severed. The Manager may, at the option of the Company, be transferred to some other position or from a store management position at any time, in which case this Contract shall be considered terminated at date of said change.

IF ANY of the above Paragraphs or portions thereof are found to be invalid for any reason by a Court of competent jurisdiction, the remaining paragraphs and or portions thereof will continue in full force and effect as set forth herein.

IT IS AGREED between the Parties that this Contract shall be construed according to the laws of the State of Michigan.

Date: 08/25/00 By: *Daniel A. Ferrie* Manager
DANIEL A. FERRIE
024-36-0166

KMART00031

TAB 4

Mar 05 04 11:29a

p. 1

1 day vac

Salaried Status Change Notice

action: To ensure accurate processing of changes in status for salaried employees, complete the following:

1. Personal Information section
2. Section that best matches the status change AND
3. Fax the information to the Kmart Resource Center for processing

1. Required**Personal Information:**

Name: <i>Daniel Ferric</i>	Social Security Number: <i>024-36-0166</i>
Store Number/City/State: <i>3879 - Braintree MA.</i>	Date of Hire: <i>7/16/98</i>

2. Select the section that best matches the status change**Transfer from another store:**

New Location Store Number:	Previous Location Store Number:
Effective Date at new store:	Last day worked at Previous Store:
New Job Title:	Previous Job Title:

Transfer from salaried to hourly payroll:

Effective Date:	New hourly rate of pay per hour:
-----------------	----------------------------------

Change in Job Title within store:

New Job Title:	Previous Job Title:
----------------	---------------------

Separation from Company:

Last Day Worked: <i>3/1/04</i>	# Vacation Days Taken: <i>0</i>	Remaining Vacation amount will be calculated and paid on pro-rated basis by KRC
Resignation Reason:	Dismissal Reason: <i>Missa preparation / Smart Plan Sales</i>	
Lease Car Returned: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> <i>N/A</i>		
Company paid relocation in progress: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> <i>X</i>		

New Hire or Promotion from Store Hourly:

HR Super K & Caribbean 248-458-1079
HR West Central 248-458-1074

HR Great Lakes 248-458-1078
HR West 248-458-1075

HR Midwest 248-458-1077
HR Southeast 248-458-1080

248-458-1082
248-458-1081

KMART00032

Mar 05 04 11:29A

1. Complete for all associates separating from Kmart Corporation.
Do not use this form for associates on an approved leave of absence.
2. Complete all entries with specificity - including reasons for separation.
3. Retain in the Associate Confidential Record Folder.

Separation Report

Personal Information
Name (Please Print): Ferric Daniel Store Group: 3879
Last Known Address: _____ Clerk #: 5800
Date Hired: _____ Exact Date of Separation: 3/1/04 Exact Last Date Worked: 3/1/04 Social Security Number: 024-36-0166
Job Title: Store Manager Rate of Pay: \$14.00 Full Time: X Part Time: _____ Seasonal: _____ Co-Op: _____
Check Appropriate Box: ☐ Reduction in workforce ☒ Other
State Reason: misrepresentation of "Small plan" rules Eligible for re-employment: Yes _____ No X

Number of prior corrective interviews recorded in personnel records pertaining to this associate: _____
Voluntary - Explain below with specificity
State Reason: _____

Associate's Signature: _____ (Refer to sign)
Witness: _____ Supervisor's Signature: _____
Signature of Supervisor Present During Termination Interview: _____ Store Manager/Director: Michael Daniel (District Manager)

Associate's Comments: _____
Supervisor's Comments: _____

Collection of Company Property/Benefit Information:
Company Property Returned? No X Yes _____
Did you retrieve Associate's Discount Card? No X Yes _____
Is Associate enrolled in a Medical Plan? No X Yes _____
Is Associate enrolled in a Dental Plan? No X Yes _____
Is Associate covered under Basic Group Life Plan? No X Yes _____
Is Associate enrolled in the Retirement Savings Plan? No _____ Yes X
If No, advise Associate to return the card.
If Yes, advise of right to convert coverage under COBRA.
If Yes, advise of right to convert coverage under COBRA.
If Yes, advise of right to convert coverage by contacting 1-800-50KSMART within 30 days of last day worked.
If Yes, advise to call 1-800-50KSMART.

KMART00036